

PLANNING BOARD OF THE CITY OF BANGOR

MEETING OF OCTOBER 19, 2004

MINUTES

Board Members Present:

**Robert Guerette, Chairman
Ryan King
David Clark
Hal Wheeler
Nathaniel Rosenblatt**

City Staff Present:

**Katherine Weber
David Gould
James Ring
Peter Witham**

Chairman Guerette called the meeting to order at 7:00 p.m.

CONSENT AGENDA

Chairman Guerette requested a motion on the Consent Agenda. Mr. King moved to approve the Consent Agenda. Mr. Rosenblatt seconded the motion, and the Board voted unanimously to approve the Consent Agenda. The item approved was the following:

Item No. 1

Site Location of Development Act Modification Approval to construct the southern portion of the Airport Perimeter Road located at Bangor International Airport in the Airport Development District and an Industry and Service District. City of Bangor, applicant.

PUBLIC HEARINGS

Item No. 2 **To amend the Land Development Code by changing part of a parcel of land located at 1732 Ohio Street from Rural Residence and Agriculture District to Contract Government and Institutional Service District. Said part of a parcel containing approximately 3.2 acres. Pilgrim Orthodox Presbyterian Church, applicant. C.O. # 04-312.**

Chairman Guerette explained the public hearing procedure, and opened the Public Hearing. Mr. Robert Lingley of Rudman and Winchell indicated that he represented Pilgrim Orthodox Presbyterian Church. The church is seeking a zone change from Rural Residence and Agricultural District to Contract Government and Institutional Service District on a 4.1-acre parcel on Ohio Street. It is the church's intention to construct a new building at the site in the near future. Mr. Lingley noted that the request is a contract rezoning that includes specific limitations on floor area, lot coverage, and impervious surface ratio. Chairman Guerette asked if it was the church's intention to relocate their church from Mount Hope Avenue and if so, why did they choose this particular site.

Attorney Lingley indicated that the church is in need of more space, and it is impracticable to expand at its present location on Mount Hope Avenue. The proposed 4.1-acre parcel is being offered to the church at a very low cost so it provides a great incentive to move to that location.

Mr. Rosenblatt asked how the Board should justify the fact that the proposal is inconsistent with the Land Use Plan in the Comprehensive Plan. Attorney Lingley indicated that, while the specifics of the Land Use Plan indicated this area as rural, the Government and Institutional Service District fits multiple uses which occur in many locations including rural areas, churches are not atypical of a rural use. This proposed use is not an inconsistent use with the rural area.

Mr. King asked how the proposal is consistent with the second standard, "being consistent with the uses in the original district." Attorney Lingley indicated that the proposal was consistent with other government and institutional uses in the area. The church should fit into the rural area with little adverse impact. The church will not likely expand to the size that would be a problem and, in fact, is limited by the contract conditions.

Chairman Guerette asked for any other proponents. Mr. Hilbert Butterfield indicated that he was the President of the Church Trustees. He indicated that it was the church's intention to build a church that fit their church's budget, that fits into the rural setting, and one that will be a good neighbor.

Chairman Guerette asked for any opponents. Mrs. Marilyn Sproul of 1765 Ohio Street indicated that she was neither for nor against the proposal, but had several questions about it. She was curious how the applicant would extend sewer and water to the site, and who would pay that cost. She wondered whether the church would have day care during the week. She hoped that the plan would include provisions to accommodate the church's traffic so that it does not become an issue on Ohio Street. She was interested in what the church may do for signage and lighting. Lastly, she was concerned about the loss of tax revenues that the City currently received on the property, and asked if the church would pay a fee in lieu of taxes.

Chairman Guerette closed the Public Hearing, and asked Mr. Lingley if he wanted to respond to any of the issues raised. Attorney Lingley indicated that the church would not be extending public utilities, but rather would provide their own on-site. He noted that, while the church would like to some day have day care services, they presently do not. Attorney Lingley indicated that sight distance at the site was good, but more analysis of traffic issues would be made in developing a site plan.

Chairman Guerette indicated that the Planning Board was not the forum to discuss fees in lieu of taxes because it is not within their control. Chairman Guerette then asked for Staff comments. Ms. Katherine Weber, Planning Officer, indicated that the applicant, Pilgrim Orthodox Presbyterian Church, is requesting a zone change from Rural Residence and Agriculture (RR&A) District to Contract Government and Institutional Service District (G&ISD) for 3.2 acres of a 4.1 acre parcel. Ms. Weber outlined the location of the project on the Land Use Policy Map. Ms. Weber pointed out that the project was indicated on the City's Land Use Concepts Map as Rural Residential and Agricultural.

Ms. Weber noted that there were other Government and Institutional Service (G&ISD) District properties in the area and that the Land Use Plan typically indicates only very large G&ISD properties. The Rural Residential and Agricultural District does allow churches on major arterials as a conditional use. This proposal, although not on an arterial street, does limit the potential impact by its contract conditions. Churches are not uncommon in rural areas and, like nursing homes and schools, they serve the rural areas where they are located. Ms. Weber indicated that, based on the protections of the contract conditions and the general nature of the Land Use Policy, Staff finds the proposal to be a reasonable request and would recommend that the Planning Board recommend adoption of the proposed zone change by the City Council.

Mr. Rosenblatt asked how the Planning Officer could justify the apparent inconsistency of the Government and Institutional Service District with the Land Use Policy Map that indicates Rural Residence and Agricultural zoning and, secondly, if this is a permitted use, how would the City be able to deal with potential traffic issues. Ms. Weber indicated that the Land Use Policy Map cannot indicate proposed land use down to the parcel level. Facilities like churches, schools, nursing homes, and other small

institutional uses need the ability to locate in suitable areas provided that adequate protections can be insured. While traffic is not an explicit standard in site plan review, applicants often address it, if requested. Ms. Weber indicated that larger facilities often have significant traffic impacts and that is why, in part, they are directed to major arterial streets. Pilgrim Church is proposing a much smaller facility that should be of less concern.

Mr. Rosenblatt noted that several of the proposed conditions were less restrictive than the existing Rural Residence and Agriculture District standards, including minimum lot size, minimum lot width, maximum lot coverage, and maximum impervious surface ratio. Ms. Weber indicated that these were the conditions offered by the applicant.

Mr. Wheeler asked what the address of Saint Mary's Church and the convenience store on Griffin Road were. Mr. Wheeler noted that there are many traffic generating uses along Ohio Street, already. After searching for the appropriate street addresses without success, the various locations were measured on a City Map and determined to be 12,500 feet for Saint Mary's Church from the proposed use and the convenience store is located a distance of 1,320 feet from Saint Mary's Church.

Mr. King asked the Planning Officer to explain what protections for Osgood Brook would remain. Ms. Weber noted that the Resource Protection (RP) District extends seventy-five feet from the brook on each side. The proposed rezoning does not change the Resource Protection District portion of the property.

Mr. King stated that he found the contract conditions inconsistent with the development standards of the Rural Residence and Agricultural District as the contract conditions would allow a much more intense development than would be allowed under the existing zoning. Traffic analysis would not be part of site plan review, if the proposed use is a permitted use.

Chairman Guerette called for a motion on the rezoning proposal. Mr. King moved to recommend to the City Council adoption of the proposed contract rezoning for the Pilgrim Orthodox Presbyterian Church at 1732 Ohio Street, per C.O.#04-312. Mr. Clark seconded the motion. Mr. Rosenblatt indicated that he did find that a church would be a fitting use in a rural area, but did not find that the proposed contract conditions would adequately regulate the proposed 3.2-acre site to be rezoned. The Board voted 3 in favor and 2 opposed to recommending to the City Council adoption of the contract zone change for 1732 Ohio Street, Pilgrim Orthodox Presbyterian Church applicant, C.O.#04-312.

Item No. 3: To amend the Land Development Code by changing part of a parcel of land located at 59 Hudson Road from Rural Residence and Agriculture District to Contract Neighborhood Service District. Said part of a parcel containing approximately 1.5 acres. James E. Davitt, applicant. C.O.#04-313

Chairman Guerette explained the public hearing procedure, and opened the Public Hearing. Mr. Jim Davitt, the applicant, noted that Bangor was one of the only large cities in Maine that did not have a B&B (Bed & Breakfast establishment). His plan was to turn three rooms in his house into guestrooms. Mr. Davitt indicated that there is adequate parking on-site and there is limited traffic on Hudson Road. The house is a historic property and the Six-Mile Falls area only has 4 historic buildings remaining. Mr. Davitt explained that the property is a working farm, and the use is consistent with the property. Mr. Wheeler asked about Bed and Breakfast uses, their economic impact as an "eco-tourism business" and whether or not Mr. Davitt had any statistical market data.

Mr. Davitt responded that Bed and Breakfast lodging originally came from Europe, typically, as a tourist home. There has been limited interest in such accommodations here in Maine. Bed and Breakfasts are typically found in coastal towns, in cities like Portland, and in rural areas with working farms. Mr. Davitt indicated that he had not done any market studies.

Chairman Guerette asked for any other proponents. Mr. Ray Dubois of 85 Hudson Road spoke in support of Mr. Davitt's proposal. Chairman called for any opponents. There being none, he closed the Public Hearing. Mr. King asked why only a portion of the property was being rezoned. Mr. Davitt indicated that the proposal protects the property from some other future uses that would not be consistent with his intent. He indicated that the rest of the property would remain rural.

Chairman Guerette asked for staff comments. Planning Officer Weber indicated that the applicant, James E. Davitt, requests a zone change from Rural Residence and Agriculture (RR&A) District to Contract Neighborhood Service District (NSD) for 1.5 acres of a 29-acre parcel located on the Hudson Road. The proposed use is for residential, agriculture, and a small, farm-oriented Bed and Breakfast. A Bed and Breakfast use is not permitted in the Rural Resident and Agriculture District.

Ms. Weber indicated the location of the parcel proposed for rezoning on the Land Use Concepts and Zoning Policy Maps. Ms. Weber explained that in the rural areas, a Neighborhood Service District does not fit, exactly. However, this is a general view and not a parcel by parcel map. The proposed contract conditions represent the development intensity of a Rural Residence and Agriculture District, and it is consistent with existing uses. Ms. Weber indicated that Staff would recommend to the Planning

Board recommend to the City Council adoption of the proposed contract rezoning application.

Mr. Rosenblatt indicated that he found that rezoning a 1.5-acre Neighborhood Service District parcel in the rural area inconsistent with the Comprehensive Plan. Mr. Rosenblatt said that the Neighborhood Service District's purpose does not fit in the rural area, and maybe the approach of a contract zone is the wrong way to go. He questioned whether it would be better to add the Bed and Breakfast use to the Rural Residence and Agricultural District as a conditional use so the Board does not have to rezone each property that may want to try this use.

Planning Officer Weber indicated that that option may be pursued, but at this time, the only option the applicant can pursue is a map amendment. The Planning Board or City Council can initiate text amendments, but not individual property owners.

Mr. Wheeler noted that over the years, some zoning districts have not evolved as others and can be inflexible and suggested that this was something the Board should consider during the Comprehensive Plan review.

Mr. King asked how the 1,000-square foot standard would work. Mr. Davitt indicated that it is a 3,600 square foot house, and guests could use three rooms and some common areas such as the porch, hallways, etc. Mr. Guerette asked if Mr. Davitt considered other avenues. Mr. Davitt indicated that he does not practice real estate law and had not been directed to other avenues as an option.

Mr. Clark moved to recommend to the City Council adoption of the contract zone change for James Davitt from Rural Residence and Agriculture (RR&A) District to Contract Neighborhood Service District (NSD) for 1.5 acres at 59 Hudson Road. Mr. Wheeler seconded the motion and the Board voted 3 in favor and 2 opposed to recommending that the City Council adopt the proposed contract rezoning for James E. Davitt, 59 Hudson Road.

Item No. 4: Conditional Use, Site Development Plan, and Site Location of Development Act Modification approval to modify the existing drive-thru and relocate the existing entrance at 1110 Broadway (Dunkin Donuts site) in a Shopping and Personal Service District. Leall, Inc., and Grant Trailer Sales, Inc., applicants.

Chairman Guerette opened the Public Hearing, and asked the applicant to provide a brief overview of the project. Mr. Rosenblatt indicated that his firm occasionally represents Dunkin Donuts and, while they are not the applicants, they are the franchiser. The Board determined that Mr. Rosenblatt had no direct financial interest in the application.

Mr. Vinal Applebee, PE of Ames A/E, indicated that the co-applicants are proposing to modify the existing Dunkin Donuts at 1110 Broadway. Mr. Applebee indicated that the specific intent of this application is to improve the existing traffic deficiencies by making some changes on the Dunkin Donuts site. Mr. Applebee indicated that the applicant proposes to move the entrance approximately 60 feet, and increase the entrance curve radii. The drive will have two exit lanes and one entrance lane separated by a raised center island in an effort to reduce the conflict of entering and exiting traffic. In addition to eliminating the on-street conflicts, this should add more vehicle storage at the drive-thru. Storage at the drive-thru should be 10 to 12 vehicles. A small number of parking spaces will be added. While the proposal adds some new impervious surface, it is offset by other unpaved areas. Mr. Applebee noted that the plan includes improved buffer plantings in the front and side yards.

Mr. Wheeler asked how many vehicles went through the site in the peak hour. Mr. Lou Lima, of Leall, Inc., indicated that about 175 cars per hour pass through the site, with the peak being between 7:00 a.m. and 9:00 a.m. The drive-thru customers are about 55% to 60% of the business. Mr. Lima noted that hopefully, with these improvements, more vehicles will be able to get by the drive-thru lane to park and come inside. He thought that better traffic flow would encourage more people to park and come in.

Chairman Guerette asked for staff comments. Planning Officer Weber indicated that the co-applicants Leall, Inc. and Grant Trailer Sales, Inc., are requesting Conditional Use, Site Development Plan approval, and a modification to the Site Location of Development Act license to modify the site entrance and rearrange parking and circulation on-site.

Ms. Weber noted that drive-thru restaurants are required to provide a minimum of five queue spaces and provide additional parking spaces. Staff finds the proposed changes consistent with adequate parking and queuing. Ms. Weber indicated that the four Conditional Use standards must be met. The proposal is an improvement over the existing situation because it will reduce traffic congestion and is consistent with other development in the area. Utilities are adequate and stormwater impacts will be minimal.

Ms. Weber stated that the Planning and Engineering Staff reviewed the application. Staff finds that the application meets the standards for Conditional Use approval, Site Development Plan approval and Site Location of Development Act modification approval. Ms. Weber recommended approval of all three elements of the applications, in three separate votes.

Mr. King moved to approve the Conditional Use for Leall, Inc. and Grant Trailer Sales, Inc. for 1110 Broadway. Mr. Wheeler seconded the motion, and the Board voted

5 to 0 in favor of the motion to approve the Conditional Use. Mr. King moved to approve the Site Development Plan for Leall, Inc. and Grant Trailer Sales, Inc. for revisions at 1110 Broadway. Mr. Clark seconded the motion, and the Board voted 5 to 0 in favor of the motion to approve the Site Development Plan. Mr. King then moved to approve the Site Location of Development Act Permit modification for 1110 Broadway for revisions to the existing Dunkin Donuts. Mr. Wheeler seconded the motion, and the Board voted 5 in favor and 0 opposed to approving the Site Location of Development Act Permit modification.

Item No. 5 **Preliminary Subdivision Plan approval for a 13-lot subdivision located off of Pine Ledge Road in a Rural Residence and Agriculture District. Vaughn E. Smith, applicant.**

Chairman Guerette opened the Public Hearing, and asked the applicant to provide a brief overview of the project. Mr. James Tower, PE of Engineering Dynamics, indicated that the applicant is proposing to subdivide 42 acres off of Pine Ledge Road. The applicant proposes to create 13 lots with one parcel to be retained by the developer. The parcels are proposed for single-family detached housing with on-site waste disposal and wells.

Mr. Rosenblatt asked about the open space and how it would be accessed. Mr. Tower indicated that access was between Lots 12 and 13, and was intended for non-motorized recreation, cross-country skiing, hiking, and passive recreation.

Mr. Rosenblatt asked about an existing right-of-way to Ohio Street. Mr. Smith indicated that the right-of-way that ran to the H.D. Smith property is no longer required, but was there prior to his acquisition of 54 Pine Ledge Road. Mr. Rosenblatt asked what the intended uses of the open space are. Mr. Smith indicated that it was to be dedicated to the City, so the City would regulate its use. Mr. Rosenblatt asked if the City was taking title to the open space. Ms. Weber indicated that that issue had not been discussed at this time.

Chairman Guerette clarified that 5% of the land area being subdivided is required to be set aside as open space. The ownership of that open space varies. Mr. Guerette indicated that he was happy to see the open space did not include a stormwater detention pond or wetlands. Mr. Smith noted that the arrangement of the open space would in fact, limit future expansion of the subdivision. Mr. Tower noted that the open space has significant grades and a very high elevation offering great views. Mr. Rosenblatt asked if it includes an existing trail. Mr. Tower responded that there are no trail connections at this time, and that it is a hardwood stand to be maintained by a Homeowners Association.

Chairman Guerette called for proponents. Mr. John Ordway, 33 Pine Ledge Road, indicated that he has resided there with his wife Janet for 34 years. Mr. Ordway indicated that change is inevitable, and that they welcome new neighbors.

The Chairman called for any other proponents. There being none, he asked for any opponents. Again there being none, he closed the Public Hearing, and asked for Staff comments. Planning Officer Weber indicated that the applicant, Vaughn E. Smith, requests Preliminary Subdivision Plan approval for a 13-lot expansion of the Pine Ledge Road Subdivision located in the Rural Residence and Agriculture District. The subdivision includes 42 acres. All of the proposed lots exceed the Rural Residence and Agriculture District standards. Ms. Weber discussed the Ordinance requirements for preliminary plan approval, noting that additional details would be required for Final Plan approval. Ms. Weber also noted that the Code Enforcement, Planning and Engineering Offices have reviewed the plan, and recommend Preliminary Plan approval.

Mr. Rosenblatt asked if the Staff wanted the Preliminary Plan conditioned as outlined in the Memorandum. Ms. Weber indicated that it would be fine to condition the approval. Mr. Wheeler moved to approve the Preliminary Plan for Pine Ledge Subdivision, Vaughn Smith, applicant. Mr. Rosenblatt moved to amend the motion by adding four conditions as outlined in the Staff memorandum to include the road construction details requested by the City Engineer, a statement from the Site Evaluator that all of the parcels are suitable for on-site waste disposal, and an analysis of stormwater management analysis.

Chairman Guerette asked why specific conditions needed to be added to the Preliminary Plan approval if they need to be done for Final Plan approval. Mr. Wheeler agreed that it seemed unnecessary. Mr. Rosenblatt indicated that they were items noted in the Staff Memorandum, and it would seem to be a good idea to list them specifically for the record.

Mr. Clark seconded the motion. The Chairman called for a motion on Mr. Rosenblatt's amendment. The Board voted 4 in favor and 1 opposed to accepting the amended motion. Chairman Guerette then called for a vote on the amended motion. The Board voted unanimously (five in favor and none opposed) to approving the Preliminary Subdivision Plan for Vaughn E. Smith.

APPROVAL OF MINUTES

Chairman Guerette indicated that there were three sets of meeting Minutes that needed of approval; namely, the Minutes of the September 7, 2004, September 21, 2004, and October 5, 2004 Meetings. Mr. Rosenblatt moved to approve the Minutes of the September 7, 2004 Meeting. Mr. King seconded the motion, and the Board voted unanimously to approve the meeting Minutes for the September 7, 2004 Meeting.

Mr. Rosenblatt moved to approve the Minutes of the September 21, 2004 Meeting. Mr. Clark seconded the motion, and the Board voted unanimously to approve the Minutes of the September 21, 2004 Meeting.

Mr. Wheeler indicated that he had a concern that the Minutes of October 5, 2004 misrepresented and/or misquoted his statements on the Lawler rezoning application. Planning Officer Weber indicated that Staff would make the appropriate corrections, and would provide the Board with an amended set of Minutes. Mr. Wheeler moved to defer action on the Minutes until the Staff corrected them. Mr. Rosenblatt seconded the motion, and the Board voted unanimously to continue the Minutes of October 5, 2004, until corrected.

OTHER BUSINESS

Chairman Guerette indicated that it would make sense to schedule another workshop session to cover recent issues involving the subdivision review process including open space and sidewalks. Secondly, the work on the Comprehensive Plan update process needs to continue. Planning Officer Weber indicated that possible meeting dates were November 9th, 23rd or 30th. Chairman Guerette indicated that they should try November 9th and that will allow for follow up discussion at the second November meeting. The Board agreed that 6:30 p.m. would be a reasonable starting time.

Chairman Guerette indicated that, given the national election on Tuesday November 2nd, it might be advisable to move the Planning Board meeting to Wednesday November 3rd. The Board all concurred to move the meeting date to November 3, 2004.

Planning Officer Weber indicated that Jim Ring would provide an update on the Penjajawoc Marsh - Bangor Mall facilitation process. Ms. Weber distributed a new draft of the Starting and Completion date amendments.

Mr. Jim Ring, City Engineer, updated the Board on the work being done to establish a citizen task force on the Penjajawoc/Mall area. He reported that the Council has discussed the process, objectives, and representation of stakeholder groups, namely, landowners, environmentalists and developers. The Council Chair will make the appointments. Potential facilitators are being identified now. Mr. Ring indicated that these activities may be completed by mid to late November. Fortunately, there has been great deal of support for the concept, and a willingness on the part of stakeholders to participate in the process.

Mr. Rosenblatt asked about the watershed work. Mr. Ring indicated that the City has received a grant from the Maine Department of Environmental Protection (DEP) to do a Watershed Management Plan. The project will include water quality sampling, quantifying various segments as to attainment, and looking at new treatment measures

for new and existing projects to improve the long-term water quality in Penjajawoc Stream.

ADJOURNMENT

There being no further business, Mr. Rosenblatt moved to adjourn. Mr. King seconded motion, and the Board voted unanimously to adjourn at 9:33 p.m.